

RECEIVED
REGIONAL COUNCIL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
BEFORE THE ADMINISTRATOR

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In the Matter of:

Stone Container Corporation
500 North 4th Street
Coshocton, Ohio 43812

Respondent.

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Docket No. 5-CAA-022-98

CONSENT AGREEMENT AND CONSENT ORDER

CONSENT AGREEMENT

Complainant, the Acting Director, Air and Radiation Division, Region 5, United States Environmental Protection Agency ("U.S. EPA"), having filed the Administrative Complaint in this civil administrative action against Respondent, Stone Container Corporation ("SCC"), Coshocton, Ohio; and, having recognized that the resolution of this action and the entry of this Consent Agreement and Consent Order ("CACO") without further litigation is the most appropriate means of resolving this action, and is in the public interest;

NOW, THEREFORE, Complainant enters into this Consent Agreement with Respondent SCC resolving this matter without further litigation, as follows:

1. On May 7, 1998, pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), Region 5, on delegated authority from the U.S. EPA Administrator, issued against SCC a Notice of Violation ("NOV"), alleging that Boiler No. 6 at its Coshocton, Ohio, facility was in violation of certain conditions of its permit to install, as amended, and, consequently, in violation of the CAA.

2. On September 18, 1998, on behalf of the Administrator, Complainant initiated this action for the assessment of a civil penalty pursuant to Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d)(1), and Sections 22.01(a)(2) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (the "Administrator's Rules"), 40 C.F.R. §§ 22.01(a)(2) and 22.13, by issuing against Respondent SCC an Administrative Complaint.

3. The Administrative Complaint alleged that, in violation of 40 C.F.R. § 52.21(r) and Section 113(d) of the Act, 42 U.S.C. § 7413(d), Respondent SCC failed to control its emissions of particulate matter from Boiler No. 6 to within its limits of its Permit to Install the boiler. The Administrative Complaint proposed that a civil penalty of \$102,400 be assessed against Respondent SCC for the violations alleged therein, in consideration of an inference made, based upon stack testing results available to Complainant, that the violations were continuing on a daily basis from December 2, 1997, to August 24, 1998.

4. Respondent SCC has not filed an answer, as, without objection from Complainant, it has been granted successive extensions of time to file an answer by the Regional Hearing Officer. Respondent SCC neither admits nor denies the violations alleged in the Administrative Complaint and in the NOV, issued May 7, 1998.

5. Respondent SCC hereby waives its right to an administrative hearing in this matter.

6. Respondent SCC certifies that, to the best of its knowledge, information and belief, it is in compliance with the Act.

7. Respondent SCC consents to the issuance of this CACO, and agrees to pay a civil penalty of \$68,500 in resolution of this matter.

8. Complainant agrees to accept the payment of a civil penalty of \$68,500, under the terms provided for in this CACO, as an appropriate civil penalty on which to resolve this matter. Complainant's determination that \$68,500 is an appropriate civil penalty for which to resolve this action incorporates an analysis of all available evidence in consideration of the statutory penalty criteria set forth at Section 113(e) of the Act, 42 U.S.C. § 7413(e), and the costs and expectations of further litigation. Specifically included in the analysis is a consideration of additional stack testing conducted on Boiler No. 6 during the period of time over which violations are alleged, unknown to Complainant at the time the Administrative Complaint was issued, which provides evidence that there were periods of time between December 2, 1997, and August 24, 1998, when Respondent was operating Boiler No. 6 in compliance with its permit, thereby reducing the period of time over which violations occurred. Also included is a consideration of a reduction in the net worth of Respondent SCC over the past several months, a circumstance likewise unknown to Complainant at the time the Administrative Complaint was issued, which would likely affect the "size of the violator" component of any civil penalty which might be assessed.

9. Within thirty (30) days of the effective date of this CACO (see Paragraph 18), Respondent SCC shall pay to the "Treasurer, United States of America," a civil penalty in the amount of \$68,500. Payment shall be made by certified check, or cashier's check, payable to the "Treasurer, United States of America," and shall be mailed to:

Region 5
U.S. Environmental Protection Agency
P.O. Box 70753
Chicago, IL 60673.

Respondent shall designate on the face of any check tendered under this CACO the name and docket number of this action. Respondent shall submit simultaneously to the following people a copy of any check tendered under this CACO:

Regional Hearing Clerk
Planning and Management Division (R-19J)
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590;

David Schulz
Air Enforcement and Compliance Assurance Branch (AE17J)
Air and Radiation Division
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590

Richard R. Wagner
Associate Regional Counsel
Office of Regional Counsel (C-14J)
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590;

10. Interest shall accrue on any amount overdue under the terms of this CACO at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. In addition, a late payment handling charge of \$15.00 will accrue on any payment made after the 30th day following the payment due date, with further late payment charges of \$15.00 accruing for each subsequent 30 day period over which any balance owing remains unpaid.

11. Respondent SCC shall not deduct any amount of the civil penalty it pays under the terms and conditions of this CACO for purposes of determining Respondent SCC's federal, state, or any local tax obligation.

12. The failure of Respondent SCC to make payment due and owing under this CACO may result in the referral of this matter to the U.S. Department of Justice for collection. The validity, amount and appropriateness of the civil penalty, as ordered paid under this CACO, is not subject to review in any collection proceeding. 15 U.S.C. § 2615(a)(4)(A).

13. This CACO shall not relieve Respondent SCC of its obligation to comply with all applicable provisions of any federal, state, county, or municipal statute, regulation, law, or ordinance, nor shall the CACO be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

14. This CACO constitutes a settlement by Complainant and full satisfaction of all claims for civil penalties for the violations alleged in the Complaint, and in the NOV, issued May 7, 1998.

15. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CACO.

16. Respondent SCC consents to the terms of this CACO, and its issuance, without further notice.

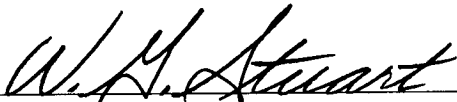
17. This CACO constitutes the entire agreement between the parties resolving all issues in this docketed matter.

18. This CACO shall become effective on its filing with the Region 5 Hearing Clerk.

IN THE MATTER OF STONE CONTAINER CORPORATION
DOCKET NO. 5-CAA-022-98
CONSENT AGREEMENT AND CONSENT ORDER

FOR STONE CONTAINER CORPORATION:

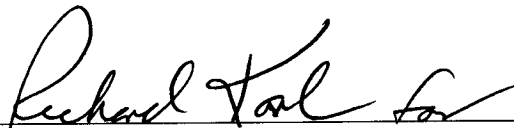
Dated: Feb. 18, 1999



W.G. Stuart
V.P. - Mill Operations
Stone Container Corporation

FOR COMPLAINANT:

Dated: 3-8-99

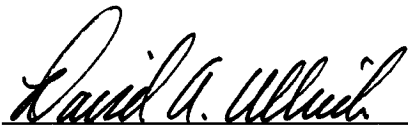


Steve H. Rothblatt
Acting Director, Air Division
Region 5
U.S. Environmental Protection Agency

IN THE MATTER OF STONE CONTAINER CORPORATION
DOCKET No. 5-CAA-022-98
CONSENT AGREEMENT AND CONSENT ORDER

CONSENT ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Consent Order. Respondent SCC is hereby ordered to comply with all of the terms and conditions of this Consent Agreement and Consent Order.



David A. Ullrich
Acting Regional Administrator
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



Date

CERTIFICATE OF MAILING

I, Avalon B. Collier, do hereby certify that an Administrative Penalty Order and a Consent Agreement and Consent Order Pursuant to the Clean Air Act were sent by Certified Mail, Return Receipt Requested to:

L. Clayton Smith, General Manager
Stone Container Corporation
500 North 4th Street
Coshocton, Ohio 43812

I also certify that copies of the Administrative Penalty Order and the Consent Agreement and Consent Order Pursuant to the Clean Air Act were sent by Certified Mail, Return Receipt Requested to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

on the 11th day of March 1999.

Avalon B. Collier
Avalon B. Collier
Office Automation Clerk

P 301 048 620
CERTIFIED MAIL RECEIPT NUMBER

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RECEIVED
REGIONAL OFFICE